IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 379 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MRS R J JASANI

Versus

HARKISHANDAS RAMNIKLAL JOSHI

Appearance:

MR AM DAGLI for MR YOGESH S LAKHANI for Petitioner

MR HARESH J TRIVEDI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

DELETED for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/02/2001

C.A.V. JUDGEMENT

#. Heard the learned counsel for the parties.

#. The respondent No.1 filed a complaint against the petitioner under sections 24 and 25 of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as `the Act'). In addition to the petitioner, two other persons are also accused therein, namely, her son and the partnership firm. Learned J.M.F.C., Dhari, on 5th July, 1997 framed charge against the petitioner and two other accused for commission of the offence under the Act. This order has been challenged by the petitioner by filing a revision application and that revision application came to be rejected under the order of the Sessions Judge, Amreli. Hence, this special criminal application.

#. Learned counsel for the petitioner contended that the petitioner is a sleeping partner in the firm and as she is not connected with the administrative work as well as to do other work of the firm, no charge could have been framed against her in this case.

#. I do not find any merits in this contention of the learned counsel for the petitioner. Both the courts concurrently held that the petitioner is a person against whom charge has to be framed. The petitioner admittedly is a partner of the firm. The petitioner, now, when the stage comes for her prosecution, has taken all these defences. When she is sharing the profits in the firm, how far it is justified on her part when the time has come for prosecution for committing the offence under the Act to take such pleas. The orders passed by the courts below are perfectly legal and justified.

#. This petition is under Article 227 of the Constitution of India. It is different matter that the petitioner also mentioned Article 226 therein as well as section 482 of Cr.P.C. but if we go by the substance of the matter, it is a petition only under Article 227 of the Constitution of India. This Court may not be justified in extending its jurisdiction under Article 227 of the Constitution of India in all the cases. Legislature in its wisdom has not provided second revision application under section 397 of Cr.P.C.. The object is to give finality to the decisions of the revisional authority. This Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardships or wrong decisions. It may be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless this Court interferes. The petitioner was a sleeping partner or active partner is a question of fact. Similarly,

whether the petitioner could have been accused in this case or not, is also not a pure question of law but may be at the most a mixed question of law and fact. In this case, what it has been done by the learned trial court is to frame charge against the petitioner. The trial will proceed wherein the petitioner will have opportunity to present her defence and if, ultimately, her defence is accepted, the Court will acquit her. At the stage of framing of charge, seldom interference has to be made by the revisional court, what to say, by this Court under Article 227 of the Constitution where the revision filed by the petitioner has also been dismissed. In the facts of this case, it cannot be said that in case this Court does not interferes in the matter, it will result in causing injustice to the petitioner. As stated earlier, the petitioner has ample opportunity to prove herself not liable for this alleged offence and she cannot be convicted but this is a matter of defence which can be placed in the trial and on satisfaction, the Court has all the powers to acquit her. Other accused in the case is the petitioner's own son and naturally by approaching to this Court by the petitioner, he is also benefitted. The proceedings of the criminal case have been stayed for all the time, meaning thereby, the Court even could not proceed against the two other accused. In fact, it appears to be an attempt on the part of the two other accused to stall the trial of the case by filing this petition in the name of the petitioner.

#. In the result, this special criminal application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. The petitioner is directed to pay costs of this petition to the respondent No.1.

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